

TRICARE and VA Health Care: Impact of the Patient Protection and Affordable Care Act (ACA)

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Summary

The 111th Congress passed, and the President signed into law, the Patient Protection and Affordable Care Act (P.L. 111-148; ACA), which was later amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152; HCERA), and is hereinafter referred to as ACA. In general, ACA did not make any significant changes to the Department of Defense (DOD) TRICARE program or to the Department of Veterans Affairs (VA) health care system. However, many have sought clarification as to whether certain provisions in ACA, such as a mandate for most individuals to have health insurance, or extending dependent coverage up to age 26, would apply to TRICARE and VA health care beneficiaries.

To address some of these concerns, Congress has introduced and/or enacted legislation. The TRICARE Affirmation Act (P.L. 111-159), signed into law on April 26, 2010, affirms that TRICARE satisfies the minimum essential coverage requirement in ACA. Similarly, P.L. 111-173, signed into law on May 27, 2010, clarifies that the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Spina Bifida Health Care Program, and the Children of Women Vietnam Veterans Health Care Program meet the “minimum essential coverage” requirement under ACA. TRICARE coverage of children was extended to age 26 by the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (P.L. 111-383).

ACA requires that if a health insurance plan provides for dependent coverage of children, the plan must continue to make such coverage available for an adult child until age 26. This requirement relating to coverage of adult children took effect for the plan years beginning on or after September 23, 2010. Under ACA, both married and unmarried children qualify for this coverage. The authorizing statute for CHAMPVA currently does not conform to this ACA requirement. Furthermore, although the TRICARE authorizing statute has been amended to provide for coverage of children until age 26, the coverage provided by the new legislation differs from that required by ACA in some important ways. To address CHAMPVA’s nonconformance with ACA’s requirements, the CHAMPVA Children’s Protection Act (H.R. 288) and a similar measure (S. 325) have been introduced in the 113th Congress.

This report addresses key questions concerning how ACA affects TRICARE and VA health care.

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Introduction

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (P.L. 111-148, ACA). On March 30, 2010, ACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010 (HCERA). Throughout this report, this amended version is referred to as ACA.¹ This health reform legislation touched on many aspects of the nation's health care delivery and financing systems. However, in general, ACA did not make any significant changes to the Department of Defense (DOD) TRICARE program or to the Department of Veterans Affairs (VA) health care system.

ACA established new federal requirements for private health insurance. Health plans are required to sell and renew policies to all individuals and may not deny coverage for preexisting conditions or otherwise discriminate based on health status. Premiums may vary by limited amounts, but only based on age, family size, geographic area, and tobacco use. Also, plans must cover preventive services and immunizations recommended by various specified entities without any cost-sharing. Finally, young adults up to age 26 generally must be allowed to remain on their parents' health plans.

Beginning in January 1, 2014, ACA requires most U.S. citizens and legal residents to have health insurance that meets the law's minimum essential coverage standard, or risk paying a penalty. The law creates competitive private health insurance marketplaces—or exchanges—in each state through which individuals and small employers are able to shop for, select, and enroll in qualified health plans. Plans offered through the exchanges, and certain other plans, must meet essential health benefit standards requiring them to cover emergency services, hospital care, physician services, preventive care, prescription drugs, and mental health and substance use disorder treatment, among other specified services. Refundable tax credits are available to certain individuals and families with incomes between 100% and 400% of the federal poverty level (FPL) to help offset the cost of purchasing insurance coverage through the exchanges. These premium tax credits are available upon enrollment so that eligible individuals and families can choose to receive the subsidy immediately rather than wait until they file taxes the following year.²

Since the enactment of ACA, concerns have been raised by veterans and Veterans Service Organizations (VSOs) on how the new law would affect TRICARE beneficiaries, as well as veterans and certain dependents receiving care through the VA health care system.³ Moreover, many have sought clarification as to whether certain provisions in ACA, such as a mandate for most individuals to have health insurance, or extending dependent coverage up to age 26, would apply to TRICARE and VA health care beneficiaries.⁴ Although the Obama Administration issued statements assuring that the two health care systems would not be negatively affected, some veterans groups have requested statutory clarification.⁵ To address some of these concerns,

¹ For more information on the ACA, see CRS Report R43048, *Overview of Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (ACA)*, by Annie L. Mach.

² For further details on provisions in ACA, see Congressional Research Service, *Issues in Focus, Health, Affordable Care Act and Health Policy* available at <http://www.crs.gov/pages/subissue.aspx?cliid=3746&parentid=13&preview=False><http://www.crs.gov/pages/subissue.aspx?cliid=3746&parentid=13&preview=False> (accessed May 3, 2019).

³ Michael Posner, "Veterans Push For Fixes To New Law," *Congress Daily*, April 6, 2010.

⁴ Jane Norman, "Military Families Left Out of Expanded Health Coverage for Adult Children," *CQ HealthBeat CQ Today*, September 27, 2010.

⁵ Ibid. Also see Department of Veterans Affairs, "Statement from VA Secretary Eric K. Shinseki," press release, March 21, 2010, <http://www1.va.gov/opa/pressrel/pressrelease.cfm?id=1871> (accessed April 17, 2013); Department of

Congress has introduced and/or enacted legislation. This report, one of a series of CRS products on ACA, addresses key questions concerning the impact of enactment of the ACA on the TRICARE and VA health care programs. To provide some context to this discussion, the report begins with a brief overview of the two health care systems and eligibility for care under each system.

Background

TRICARE⁶

The Department of Defense (DOD) administers health care services through a program known as TRICARE to over 9 million eligible beneficiaries that include active duty uniformed personnel and their dependents, eligible members of the Reserve Component and their dependents, and uniformed services retirees and their dependents and survivors. TRICARE provides health care services through both military and nonmilitary hospitals, clinics, and other providers. TRICARE is administered on a regional basis by the TRICARE Management Activity, which uses a regional managed care support contractor to develop networks of civilian providers and process beneficiary claims in each of its North, South, and West regions. TRICARE has three basic options for non-Medicare eligible beneficiaries: TRICARE Prime, which is a managed care option that relies primarily upon military providers and treatment facilities; a fee-for-service option known as TRICARE Standard; and a preferred-provider option known as TRICARE Extra. Individuals who are eligible for Medicare and otherwise eligible for TRICARE may enroll in Medicare Part B and receive “wrap-around” TRICARE coverage through the TRICARE for Life Program, which covers costs not paid by Medicare that would otherwise be incurred by the beneficiary. Other options include TRICARE Reserve Select for members of the Reserve Component and TRICARE Retired Reserve for retired reservists who are not old enough to receive retired pay. In addition, the Continued Health Care Benefit Program offers an option to continue coverage when regular TRICARE coverage terminates.

The VA Health Care System and Eligibility for Care⁷

The Department of Veterans Affairs (VA), through the Veterans Health Administration (VHA), operates the nation’s largest integrated direct health care delivery system.⁸ While Medicare, Medicaid, and the Children’s Health Insurance Program (CHIP) are also publicly funded programs, most health care services under these programs are delivered by private providers in private facilities. In contrast, the VA health care system could be categorized as a veteran-specific

Defense, “Tricare Meets Health Care Bill’s Standards, Gates Says,” press release, March 22, 2010, <http://www.defense.gov/News/NewsArticle.aspx?ID=58412> (accessed January 3, 2014); and Letter from Kathleen Sebelius, Secretary of Health and Human Services, to Honorable Max Baucus, Chairman, Senate Committee on Finance, March 24, 2010 (copy available from the authors to congressional clients upon request).

⁶ For more detailed information on the TRICARE program, see CRS Report RL33537, *Military Medical Care: Questions and Answers*, by Don J. Jansen.

⁷ For a complete discussion of eligibility for VA health care, priority groups, and enrollment, see CRS Report R42747, *Health Care for Veterans: Answers to Frequently Asked Questions*, by Sidath Viranga Panangala and Erin Bagalman.

⁸ U.S. Department of Veterans Affairs, *FY 2013 Performance and Accountability Report*, Washington, DC, December 16, 2013, p. Part 1-1. Established on January 3, 1946, as the Department of Medicine and Surgery by P.L. 79-293, succeeded in 1989 by the Veterans Health Services and Research Administration, renamed the Veterans Health Administration in 1991.

national health care system in the sense that the federal government owns the medical facilities and employs the health care providers.⁹

In general, eligibility for VA health care is based on veteran status,¹⁰ presence of service-connected disabilities¹¹ or exposures,¹² income,¹³ and/or other factors, such as status as a former prisoner of war or receipt of a Purple Heart.

The VHA also pays for care provided to veterans by private-sector providers on a fee basis under certain circumstances. Inpatient and outpatient care are also provided in the private sector to eligible dependents of veterans under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA; see discussion below). All enrolled veterans are offered a standard medical benefits package.¹⁴

Veterans do not pay premiums or enrollment fees. However, under current law most veterans are required to pay copayments for the treatment of nonservice-connected conditions.¹⁵ It should be noted that those veterans who are rated 50% or more service-connected disabled and enrolled in the VA health care system do not pay copayments even for nonservice-connected care. Moreover, VA is required to collect reasonable charges for medical care or services (including prescription drugs) from a third-party insurer to the extent that the veteran or the provider of the care or services would be eligible to receive payment from a third-party insurer for a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health insurance plan.¹⁶

Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)¹⁷

Unlike TRICARE, VA health care covers only a select group of dependents. In 1973, Congress established the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) as a means of providing health care services to dependents and survivors of certain

⁹ Adam Oliver, “The Veterans Health Administration: An American Success Story?” *The Milbank Quarterly*, vol. 85, no. 1 (March 2007), pp. 5-35.

¹⁰ Veteran’s status is established by active-duty status in the U.S. Armed Forces and an honorable discharge or release from active military service. Generally, persons enlisting in one of the armed forces after September 7, 1980, and officers commissioned after October 16, 1981, must have completed two years of active duty or the full period of their initial service obligation to be eligible for VA health care benefits. Service members discharged at any time because of service-connected disabilities are not held to this requirement.

¹¹ A service-connected disability is a disability that was incurred or aggravated in the line of duty in the U.S. Armed Forces (38 U.S.C. §101 (16)). VA determines whether veterans have service-connected disabilities, and for those with such disabilities, assigns ratings from 0% to 100% based on the severity of the disability. Percentages are assigned in increments of 10% (38 C.F.R. §§4.1-4.31).

¹² For example, veterans who may have been exposed to Agent Orange during the Vietnam War or veterans who may have diseases potentially related to service in the Gulf War may be eligible to receive care.

¹³ Veterans with no service-connected conditions and who are Medicaid eligible, or who have an income below a certain VA means-test threshold and below a median income threshold for the geographic area in which they live, are also eligible to enroll in the VA health care system.

¹⁴ A detailed listing of VHA’s standardized medical benefits package is available at 38 C.F.R. §17.38 (2012).

¹⁵ 38 U.S.C. §1729.

¹⁶ 38 U.S.C. §1729(a)(2)(D); 38 C.F.R. §17.101(a)(1)(i) (2012).

¹⁷ For more information, see CRS Report RS22483, *Health Care for Dependents and Survivors of Veterans*, by Sidath Viranga Panangala.

veterans.¹⁸ CHAMPVA primarily is a fee-for-service program that provides reimbursement for most medical care for certain eligible dependents and survivors of veterans rated permanently and totally disabled from a service-connected condition. Eligibility for CHAMPVA requires inclusion in one of the following categories:¹⁹

- the individual is the spouse or child of a veteran who has been rated permanently and totally disabled for a service-connected disability; or
- the individual is the surviving spouse or child of a veteran who died from a VA-rated service-connected disability; or
- the individual is the surviving spouse or child of a veteran who was at the time of death rated permanently and totally disabled from a service-connected disability; or
- the individual is the surviving spouse or child of a military member who died on active duty, not due to misconduct (in most cases, these family members are eligible under TRICARE, not CHAMPVA); or
- the individual is designated as a “primary family caregiver” of a seriously injured veteran and does not have any other form of health insurance.²⁰

Questions and Answers

How Does ACA Affect TRICARE?

In general, ACA does not affect TRICARE administration, health care benefits, eligibility, or cost to beneficiaries.

ACA does open a special Medicare Part B enrollment window to enable certain individuals to gain coverage under the TRICARE for Life program.²¹ TRICARE was extended to Medicare-eligible military retirees, their Medicare-eligible spouses and dependent children, and Medicare-eligible widow/widowers by the Floyd D. Spence National Defense Authorization Act of 2001 (P.L. 106-398). This law established the TRICARE for Life (TFL) program, which acts as a secondary payer to Medicare and provides supplemental coverage to TRICARE-eligible beneficiaries who are entitled to Medicare Part A based on age, disability, or end-stage renal disease (ESRD). In order to participate in TFL, these TRICARE-eligible beneficiaries must enroll in and pay premiums for Medicare Part B. TRICARE-eligible beneficiaries who are entitled to Medicare Part A based on age, disability, or ESRD, but decline Part B, lose eligibility for TRICARE benefits.²² In addition, individuals who choose not to enroll in Medicare Part B upon becoming eligible may elect to do so later during an annual enrollment period; however, the Medicare Part B late enrollment penalty would apply. ACA also waives the Medicare Part B late enrollment penalty during the 12-month special enrollment period (SEP) for military retirees, their spouses (including widows/widowers), and dependent children who are otherwise eligible for TRICARE and are entitled to Medicare Part A based on disability or ESRD, but have declined Part B. The Secretary of Defense is required to identify and notify individuals of their eligibility

¹⁸ Veterans Health Care Expansion Act of 1973 (P.L. 93-82).

¹⁹ 38 U.S.C. §1781; 38 C.F.R. §17.270-17.278; 38 C.F.R. §71.25.

²⁰ Primary Family Caregiver means an individual who meets the requirements specified in 38 C.F.R. §71.25.

²¹ §3110 of PPACA.

²² 10 U.S.C. §1086(d).

for the SEP; the Secretary of Health and Human Services (HHS) and the Commissioner for Social Security must support these efforts. This section was amended by the Medicare and Medicaid Extenders Act of 2010²³ to clarify that Section 3110 applies to Medicare Part B elections made on or after the date of enactment of ACA. This is the only provision in ACA that has an effect on beneficiary eligibility under the TRICARE program.

A 2011 Government Accountability Office report indicates that, overall, DOD expects to incur minimal costs to implement applicable ACA and HCERA provisions with which department officials have determined it is required to comply.²⁴

How Does ACA Affect VA Health Care?

In general, ACA does not appear to affect current VA health care benefits, eligibility, or cost to beneficiaries.

However, the VA anticipates a net increase in enrollment as a result of the ACA. It could be assumed that one reason for this increase is the individual shared responsibility provision in the ACA, which requires each individual to have minimum essential health coverage, qualify for an exemption, or pay a penalty when filing his or her federal income tax return.²⁵ According to the VA, the increase will result from eligible non-enrolled veterans enrolling in the VA health care system to avoid the shared responsibility payment.²⁶

Additionally, ACA contains several provisions related to the VA. Specifically, it includes a provision (§9011) that requires the VA to report to Congress on the effect on the VA health care system of the annual fee imposed by ACA on certain manufacturers and importers of branded prescription drugs, as well as the new excise tax imposed on the sale of medical devices by manufacturers, producers, or importers (see question on medical devices later in this report). Furthermore, it requires the VA to participate in the Interagency Working Group on Health Care Quality (§3012), exempts the VA from a fee on all health insurers based on their market share (§4377), and provides the VA access to the National Practitioner Data Bank without a charge (§6403).

Do TRICARE and VA Health Care Meet “Minimum Essential Coverage” Requirements?

The law specifies that TRICARE is generally considered minimum essential coverage for shared responsibility requirements under the ACA.²⁷ However, in some circumstances, such as to qualify for premium tax credits (see below), there are exceptions. Likewise, *enrollment* in the VA health

²³ §201, P.L. 111-309.

²⁴ U.S. Government Accountability Office, *Impact of Health Care Reform Legislation on the Department of Defense*, GAO-11-837R, September 26, 2011, p. 2, <http://www.gao.gov/new.items/d11837r.pdf>.

²⁵ Most individuals or families without health insurance coverage will pay a penalty which is the greater of a flat dollar amount or a percentage of applicable income. In 2014, the annual penalty is the greater of \$95 or 1% of applicable income; the penalty increases in 2015 and 2016 and is adjusted for inflation thereafter. For more information see, CRS Report R41331, *Individual Mandate under ACA*, by Annie L. Mach.

²⁶ Testimony of Dr. Robert A. Petzel, Under Secretary for Health Veterans, Health Administration, U.S. Department of Veterans Affairs, Before the U.S. House Committee on Veterans' Affairs, April 24, 2013.

²⁷ TRICARE Affirmation Act of 2010, P.L. 111-159 (124 Stat. 1123).

care system meets the health care law's minimum essential coverage standard, which went into effect on January 1, 2014.²⁸

ACA requires certain individuals to maintain minimum essential health care coverage and provides a penalty for failure to maintain such coverage beginning January 1, 2014. "Minimum essential coverage" is explicitly defined as coverage under VA Health Care; Medicare Part A; Medicaid; CHIP; the TRICARE for Life program; the Peace Corps program; an eligible employer-sponsored plan (as defined by ACA); a governmental plan (local, state, federal) including the Federal Employees Health Benefits Program (FEHBP) and any plan established by an Indian tribal government; any plan offered in the individual, small group, or large group market; a grandfathered health plan; and any other health benefits coverage, such as a state health benefits risk pool, as recognized by the HHS Secretary in coordination with the Treasury Secretary. The relevant definition²⁹ of "governmental plan" includes the TRICARE program beyond the TRICARE for Life program. However, because TRICARE is not explicitly listed as minimum essential coverage, some concern had been expressed by beneficiary groups that regular TRICARE coverage may not meet the requirement. The TRICARE Affirmation Act (H.R. 4887; P.L. 111-159), signed into law on April 26, 2010, amended the Internal Revenue Code to provide that TRICARE coverage satisfies the minimum essential coverage requirements as required by ACA. Likewise, P.L. 111-173, signed into law on May 27, 2010, clarifies that those enrolled in the VA health care system meet the minimum essential coverage requirement.

Will CHAMPVA, and VA Coverage of Children with Spina Bifida and Certain Birth Defects Meet the "Minimum Essential Coverage" Requirement?

It was initially unclear whether the Spina Bifida Health Care Program (SBHCP) and the Children of Women Vietnam Veterans Health Care Program (CWVV) met the "minimum essential coverage" requirement under ACA. However, P.L. 111-173, signed into law on May 27, 2010, clarifies that CHAMPVA, SBHCP, and CWVV meet the minimum essential coverage requirement.

The VA administers the Spina Bifida Health Care Program (SBHCP) for those biological children diagnosed with spina bifida of veterans who served in Vietnam, and of veterans who served in Korea during the period September 1, 1967, through August 31, 1971.³⁰ The program provides reimbursement for comprehensive medical care for those beneficiaries diagnosed with spina bifida except for conditions associated with spina bifida occulta. Similarly, the VA administers the Children of Women Vietnam Veterans Health Care Program (CWVV). Under this program, the VA reimburses for care of certain birth defects identified by the VA as resulting in permanent physical or mental disability of the biological child of a woman veteran who served in Vietnam between February 28, 1961, and May 7, 1975.³¹

²⁸ For more information see, <http://www.va.gov/health/aca/> (accessed January 10, 2014).

²⁹ See 42 U.S.C. 300gg-91(d)(8).

³⁰ 38 U.S.C. §§1803; 1821.

³¹ 38 U.S.C. §§1811; 1812; 1813.

Is a Person Who Is Eligible for VA Health Care or TRICARE, but Is Not Enrolled in Either Program, Eligible for the Health Insurance Premium Tax Credit?

A veteran (or certain beneficiaries) who is eligible for health care provided through the VA, but *not actually enrolled* in the VA health care system, may be eligible for premium tax credits (as long as they meet income and other requirements for obtaining the credit).³² Similarly, TRICARE beneficiaries *not actually enrolled* in certain TRICARE programs may be eligible for the premium tax credit.

Because the standards for eligibility for VA health care do not allow health insurance exchanges to identify everyone who may be eligible for VA health care at the time he or she is seeking an eligibility determination for the premium tax credit, the Internal Revenue Service (IRS) regulations made an exception, and provided that an individual is treated as *eligible* for VA coverage only if he or she is *actually enrolled* in the coverage.³³ This means that veterans *enrolled* in the VA health care system and certain beneficiaries enrolled in the CHAMPVA and the Spina Bifida programs would meet the minimum essential coverage requirement and thereby would not be eligible for the premium tax credit. However, a veteran (or certain beneficiaries) who is eligible for VA health care coverage, but not enrolled in the VA health care system, could enroll in a health insurance plan offered through an exchange and, if eligible, receive a tax credit that reduces the monthly premium of the health insurance plan.

TRICARE beneficiaries who are eligible for, but *not enrolled* in, the Continued Health Care Benefit Program, TRICARE Retired Reserve, TRICARE Young Adult, and TRICARE Reserve Select programs may be eligible for the premium tax credit. Individuals who are *enrolled* in these programs are not eligible.³⁴

Does ACA Require TRICARE to Provide Coverage to Dependent Children Up to Age 26?

The ACA provision extending health insurance coverage to dependent children until age 26 did not extend to TRICARE beneficiaries.

Subsequent to the passage of the ACA, however, the Ike Skelton National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-383) authorized a new TRICARE option now known as the TRICARE Young Adult Program,³⁵ that allows children up to age 26 who lose coverage under a parent's TRICARE policy, and who are not otherwise eligible to enroll in an employer-sponsored plan, to purchase TRICARE coverage for themselves.

In general, eligibility for TRICARE under a parent's policy is lost when either a dependent child turns 23 (if enrolled in an accredited school as a full-time student) or 21 if not enrolled. Section 1001 of ACA amends Part A of Title XXVII of the Public Health Service Act (PHSA) to add a

³² For more information on health insurance premium credits in the ACA see, CRS Report R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (ACA)*, by Bernadette Fernandez.

³³ Internal Revenue Service (IRS), Treasury, "Health Insurance Premium Tax Credit," 77 *Federal Register* 30379, May 23, 2012. See discussion under "Special rule for coverage for veterans and other individuals under chapter 17 or 18 of Title 38, U.S.C.

³⁴ *Ibid.*

³⁵ <http://www.tricare.mil/Welcome/Plans/TYA.aspx> (accessed January 2, 2014).

new Section 2714 specifying that a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available until the dependent child turns 26 years of age. However, the provisions of title XXVII of the PHSA do not appear to apply to TRICARE.³⁶

Coverage under the TRICARE program is governed by Chapter 55 of Title 10, *United States Code*. Under 10 U.S.C. §1072(2)(D), the term “dependent” only includes a child who has not attained the age of 21 or has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning.

Section 702 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-383)³⁷ amended title 10, to add a new Section 1110b extending coverage to children up to age 26 who are not otherwise eligible to enroll in an employer-sponsored plan to purchase TRICARE coverage. The premium would be equal to the cost of the coverage as determined by the Secretary of Defense on an appropriate actuarial basis. The program is effective retroactively, not later than January 1, 2011. The program is known as the “TRICARE Young Adult Program. For calendar year 2014 the monthly premium for a TRICARE Young Adult (TYA) Prime enrollee is \$180, and \$156 for a TYA Standard enrollee.³⁸ As of June 2012, there were approximately 11,171 beneficiaries enrolled in TYA Standard and 6,407 in TYA Prime.

The premium feature does make the TRICARE program dissimilar from the coverage mandated by ACA. The ACA provision amended the Public Health Service Act to include a Section 2714 that provides:

A group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child (who is not married) until the child turns 26 years of age.

Department of Health and Human Services regulations have interpreted this to extend dependent coverage, not create a new policy for which a separate premium would be charged.³⁹

Will ACA Extend Coverage to Dependent Children Under CHAMPVA Up to Age 26?

The provision extending health insurance coverage to dependent children until age 26 in ACA does not appear to extend to CHAMPVA beneficiaries.

In general, eligibility for CHAMPVA is lost when either a child (other than a helpless child)⁴⁰ turns 18, unless the child is enrolled in an accredited school as a full-time student; a child, who

³⁶ See 42 U.S.C. §300gg-21(b), as amended by PPACA (containing limitations on the applicability of the Public Health Services Act provisions).

³⁷ H.R. 6523 was signed into law on January 7, 2011.

³⁸ <http://www.tricare.mil/Welcomes/Plans/TYA.aspx> (accessed January 2, 2014).

³⁹ Department of the Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Department of Health and Human Services, “Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act,” 75 *Federal Register* 27122-27140, May 13, 2010.

⁴⁰ A helpless child is established after a fact-based analysis completed by a VA Regional Office determines the child to be permanently incapable of self-support by the age of 18. See 38 C.F.R. §3.356 and <http://www.va.gov/hac/forbeneficiaries/champva/handbook/chandbook.pdf> (accessed January 3, 2014).

has been a full-time student, turns 23 or loses full-time student status; a child marries; or a stepchild who no longer lives in the household of the sponsor.

Section 1001 of ACA amends Part A of Title XXVII of the PHSA to add a new Section 2714 specifying that a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns 26 years of age. This requirement relating to coverage of adult children took effect for the plan years beginning on or after September 23, 2010.⁴¹ However, the provisions of Title XXVII of the PHSA do not appear to apply to CHAMPVA.⁴² During the 111th Congress, the House-passed version of the National Defense Authorization Act (NDAA) for FY2011 (H.R. 5136, H.Rept. 111-491) included a provision that would have extended dependent coverage under CHAMPVA until age 26. However, the final version of the FY2011 NDAA (H.R. 6523; P.L. 111-383) did not include any provision to extend CHAMPVA coverage to eligible dependent children up to age 26.⁴³

In the 113th Congress, the CHAMPVA Children's Protection Act of 2013 (H.R. 288) and a similar measure (S. 325) have been introduced. These measures, if enacted, would extend eligibility for coverage of children under CHAMPVA until they reach age 26, so that eligibility for coverage of children under CHAMPVA will be consistent with provisions in the ACA. In May 2013, the Senate Veterans' Affairs Committee held a hearing on S. 325. At this hearing the Administration provided its views on S. 325:

Contingent upon Congress providing additional funding to support the change in eligibility, VA supports S. 325, which would amend 38 U.S.C. Section 1781(c) to extend eligibility for coverage of children under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) until they reach age 26 so that eligibility for coverage of children under CHAMPVA will be consistent with certain private sector coverage under the Affordable Care Act. S. 325 would extend eligibility for coverage of children under CHAMPVA regardless of age, marital status, and school enrollment status up to the age of 26; and the bill would ensure that CHAMPVA eligibility would not be limited for individuals described in Section 101(4)(A)(ii) (individuals who, before attaining age 18, became permanently incapable of self-support). The bill would not extend eligibility for children who, before January 1, 2014, are eligible to enroll in an eligible employer-sponsored plan (as defined in Internal Revenue Code section 5000A(f)(2)). This means that the age, school status, and marital status requirements in 38 U.S.C. Section 101(4) would, before 2014, apply to children who are eligible to enroll in an eligible employer-sponsored health plan and the bill would not extend eligibility for coverage of those individuals. This provision in the bill is in accordance with the discretion provided to grandfathered health plans that are group health plans in the private sector under the Affordable Care Act. The amendments made by S. 325 would apply with respect to medical care provided on or after the date of enactment of the bill. VHA estimates that this provision would cost \$51 million in FY 2014; \$301 million over 5 years; and \$750 million over 10 years.⁴⁴

⁴¹ 45 CFR 147.120.

⁴² See 42 U.S.C. 300gg-91(b)(1).

⁴³ During the 111th Congress, four stand-alone measures were introduced to extend CHAMPVA coverage to eligible dependent children up to age 26: H.R. 5185, H.R. 5206, S. 3356, and S. 3801. In the 112th Congress, two stand-alone measures were introduced to extend CHAMPVA coverage to eligible dependent children up to age 26: H.R. 115, and S. 490.

⁴⁴ Statement of Robert L. Jesse, Principal Deputy Under Secretary for Health, Department Of Veterans Affairs, Before the U.S. Senate Committee on Veterans' Affairs, May 9, 2013.

Will ACA Affect the Cost of Prescription Drugs and Medical Devices Provided to Veterans?

It is unclear at this time whether ACA will affect the cost of prescription drugs and medical devices provided to veterans.

Under current law, there are excise taxes on sales by manufacturers of certain products. Certain sales are exempt from this tax.⁴⁵ ACA imposes an annual fee on certain manufacturers and importers of branded prescription drugs (including biological products and excluding orphan drugs). The fee structure is based on annual sales and is set to reach a certain revenue target each year.⁴⁶ In addition, under ACA a new excise tax of 2.3% is imposed on the sale of medical devices by manufacturers, producers, or importers.⁴⁷ This provision exempts eyeglasses, contact lenses, hearing aids, and any device of a type that is generally purchased by the public at retail for individual use. The tax applies to sales of devices made after December 31, 2012.⁴⁸ Section 9011 of ACA required the Secretary of Veterans Affairs to conduct a study on the effect of provisions in Title IX of ACA—in particular the new fees on drug and device manufacturers—on the cost of medical care provided to veterans, and veterans’ access to medical devices and branded prescription drugs. The Secretary was required to report the results of such a study to the House Committee on Ways and Means and the Senate Committee on Finance. The Secretary submitted the report to the committees in early 2013.

Are TRICARE and VA Health Care Subject to the High-Value Plan Excise Tax?

Health care coverage provided by TRICARE or by the VA is *not* subject to the high-value plan excise tax established by section 9001 of the ACA.

TRICARE and VA health care (as well as other government plans generally) do not fall under the definition of “employer-sponsored plan” (see the exception from that definition for government plans provided by 26 U.S.C. 5000(d)). The Internal Revenue Code provision at 26 U.S.C. 4980I(d)(E) adds “governmental plans” to those subject to the excise tax but this provision does not apply to TRICARE and VA health care because of language limiting the tax to government plans primarily for “civilian employees.” The 26 U.S.C. 4980I(d)(E) provision reads:

(E) Governmental plans included

Applicable employer-sponsored coverage shall include coverage under any group health plan established and maintained primarily for its civilian employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any such government.

This exempts TRICARE and VA health care from the excise tax.

⁴⁵ See Internal Revenue Code Chapter 32.

⁴⁶ For more detailed information on the medical device excise tax see, CRS Report R42971, *The Medical Device Excise Tax: A Legal Overview*, by Andrew Nolan; and CRS Report R43342, *The Medical Device Excise Tax: Economic Analysis*, by Jane G. Gravelle and Sean Lowry.

⁴⁷ Ibid.

⁴⁸ Ibid.

The excise tax does not take effect until 2018 due to amendments to the ACA made by section 1401 of P.L. 111-152. At that time, a 40% excise tax will be imposed on the value of health insurance benefits exceeding certain thresholds.

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